

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BLAKE BROEHM, JAKE BROEHM and
JARROD BROEHM

Plaintiffs,

v.

Case No. 13-C-142

WISCONSIN CENTRAL LTD and
CANADIAN NATIONAL RAILWAY COMPANY,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION TO DISMISS [5]
AND DISMISSING AS MOOT MOTION TO STAY [13]**

Plaintiffs Blake Broehm, Jake Broehm and Jarrod Broehm brought this personal injury action against defendants Wisconsin Central LTD and Canadian National Railway Company ("CNR"). Defendant CNR filed a motion to dismiss or in the alternative to quash service, docket [5], on the ground that service of the Complaint was improperly accomplished. Plaintiffs, in lieu of filing a response, filed their own motion, docket [13], to stay any hearing on the motion to dismiss, asserting that its time to properly serve the complaint has not yet run and they still plan to properly effect service on CNR. For the reasons stated below, both motions will be denied.

CNR's motion to dismiss is denied because it is premature. Even under Wisconsin rules of civil procedure, the plaintiffs had 90 days from filing, or until April 28, 2013, in which to complete service. After the action was removed to federal court, it is governed by federal law. Fed. R. Civ. P. 81(c). Under the federal rules, a plaintiff has 120 days in which to complete service. Fed. R. Civ.

P. 4(m). Moreover, once a case is removed to federal court prior to the expiration of the ninety-day period for service under state law, a defendant has an additional 120 days in which to complete service. *Wallace v. Microsoft Corp.*, 596 F.3d 703, 706 (10th Cir. 2010).

From the foregoing, it follows that the time to effect service on CNR has not yet run, and thus CNR's motion to dismiss for lack of service is premature. CNR's motion is therefore denied. If the plaintiffs fail to properly serve CNR within the time allowed, CNR may renew its motion. The plaintiffs' motion to stay the case is denied as moot.

SO ORDERED this 11th day of March, 2013.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court